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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

14 Cr. 130 (LAP)

5 KENDALL THOMPSON,

6 Defendant.

7 -----x

8  
9 May 14, 2015  
11:05 a.m.

10 Before:

11 HON. LORETTA A. PRESKA,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 BY: RICHARD A. COOPER

ANDREA GRISWOLD

Assistant United States Attorneys

18 ANTHONY CECUTTI

19 Attorney for Defendant

20 ALSO PRESENT: DANIEL X. McCAFFREY, Special Agent, FBI

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1 (Case called)

2 THE COURT: Is the government ready?

3 MR. COOPER: Yes. Good morning, your Honor. Richard  
4 Cooper and Andrea Griswold. We are here with Special Agent  
5 Daniel McCaffrey from the FBI.

6 THE COURT: Good morning.

7 Is the defense ready?

8 MR. CECUTTI: Yes. Good morning, Judge Preska.  
9 Anthony Cecutti with my client Mr. Kendall Thompson.

10 THE COURT: Thank you.

11 Mr. Cecutti, do I correctly understand that  
12 Mr. Thompson wishes to change his plea?

13 MR. CECUTTI: Yes, your Honor.

14 THE COURT: Mr. Thompson, would you stand and raise  
15 your right hand?

16 (Defendant sworn)

17 THE COURT: Sir, do you understand that you are now  
18 under oath and if you answer my questions falsely, your answers  
19 may later be used against you in a prosecution for perjury with  
20 the making of a false statement?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: How old are you, sir?

23 THE DEFENDANT: 31.

24 THE COURT: Where were you born?

25 THE DEFENDANT: Brooklyn, New York.

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1 THE COURT: Sir, you are a citizen of the United  
2 States?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And you read, write, speak and understand  
5 English; is that right?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: How far did you go in school, sir?

8 THE DEFENDANT: High school, trade school, and some  
9 community college.

10 THE COURT: Excellent.

11 Are you currently or have you recently been under the  
12 care of a doctor or a psychiatrist?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Have you been hospitalized or treated  
15 recently for alcoholism, narcotic addiction, or any other type  
16 of drug abuse?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Have you ever been treated for any form of  
19 mental illness?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Are you currently under the influence of  
22 any substance such as alcohol, drugs, or any medication that  
23 might affect your ability to understand what you are doing here  
24 in court today?

25 THE DEFENDANT: No, ma'am.

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1 THE COURT: Do you feel well enough to understand what  
2 you are doing here in court today?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Thank you, sir.

5 Have you received a copy of the indictment against  
6 you, S4 14 crim 130?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Have you gone over it with your attorney?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Has Mr. Cecutti explained the charges to  
11 you?

12 THE DEFENDANT: Yes, he has, ma'am.

13 THE COURT: Have you told Mr. Cecutti everything you  
14 know about the matters set out in the indictment?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: You haven't held anything back from him,  
17 have you, sir?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Very good.

20 Counsel, do I correctly understand that there is an  
21 agreement between the government and the defendant which is  
22 dated May 7, 2015 and which is signed May 14, 2015?

23 MR. COOPER: Yes, your Honor.

24 THE COURT: May I ask the government to summarize,  
25 please, the terms and conditions in the agreement?

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1 MR. COOPER: Yes, your Honor.

2 Pursuant to the agreement, the defendant is going to  
3 enter a plea of guilty to Count One of the indictment which  
4 charges conspiracy to commit Hobbs Act Robbery. With respect  
5 to the offense level, your Honor, the defendant is stipulating  
6 to an adjusted applicable guidelines offense level of 29 which  
7 is based on, among other things, a seven-level enhancement  
8 because a firearm was discharged during the commission of this  
9 offense which was the robbery of a jewelry store in Brooklyn,  
10 New York, in September 2013, as well as a five-level  
11 enhancement because a victim sustained more than serious bodily  
12 injury during the course of that robbery. Essentially, the  
13 victim was shot in the leg.

14 In addition, your Honor, the other aspect that I have  
15 called the Court's attention to is on page 3 where the parties  
16 agree not to seek a sentence outside of the stipulated  
17 guidelines range or suggest in any way that the probation  
18 office or the Court consider a sentence outside the stipulated  
19 guidelines range which in this case is 108 to 135 months.

20 THE COURT: Yes, sir.

21 Mr. Thompson, are those the terms and conditions of  
22 the agreement, as you understand them?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you understand, sir, that in this  
25 agreement, you and the government have agreed to a stipulated

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1 guidelines range of 108 to 135 months?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand that you and the  
4 government have agreed that neither of you will seek a sentence  
5 outside of that 108 to 135-month range?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you also recall, sir, that in this  
8 agreement you have agreed not to appeal or otherwise litigate a  
9 sentence within that 108 to 135-month range?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Sir, have you had enough time to review  
12 the agreement, to go over it with Mr. Cecutti, and to have all  
13 of your questions answered?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: I am holding up the original of the  
16 agreement, sir. I am turning to the last page. Is that your  
17 signature over there on the left-hand side under the words  
18 agreed and consented to?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Am I correct that your willingness to  
21 offer to plead guilty is, in part, a result of this agreement  
22 between you and the government?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Counsel, are there any additional  
25 agreements between the government and Mr. Thompson that are not

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1 set forth in the written plea agreement?

2 MR. CECUTTI: No, your Honor.

3 MR. COOPER: No, your Honor.

4 THE COURT: Very well. The agreement is acceptable to  
5 the Court.

6 Mr. Thompson, have you been induced to offer to plead  
7 guilty as a result of any fear, pressure, threat, or force of  
8 any kind?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Have you been induced to offer to plead  
11 guilty as a result of any statements other than in your written  
12 plea agreement, to the effect that you would get special  
13 treatment or special leniency or some kind of special  
14 consideration if you pleaded guilty rather than going to trial?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: And, do you understand that you have the  
17 right to continue in your plea of not guilty and to proceed to  
18 trial?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you understand that if you do not plead  
21 guilty, you have a right to a speedy and public trial by a jury  
22 of 12 persons?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you understand that you have the right  
25 to be represented by an attorney at trial and at every stage of

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1 the proceedings including an appeal, and if you cannot afford  
2 an attorney, one will be appointed to represent you free of  
3 charge?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you understand that if your plea of  
6 guilty is accepted, there will be no further trial of any kind?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you understand that if you pleaded not  
9 guilty and went to trial, that you would have -- at that trial  
10 you would be presumed innocent unless and until the government  
11 proved your guilt beyond a reasonable doubt to all 12 jurors?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that upon such a trial  
14 you would have the right to confront and cross-examine all of  
15 the witnesses called by the government against you?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you understand that at such a trial you  
18 would have the right to remain silent and no inference could be  
19 made against you by reason of your silence or, if you wanted  
20 to, you could take the stand and testify in your own defense?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Do you understand that at such a trial you  
23 would have the right to subpoena witnesses and evidence for  
24 your own defense?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: Do you understand that if your offer to  
2 plead guilty is accepted, there will be no further trial of any  
3 kind?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you understand that if you wanted to  
6 and if the government agreed, you could have a trial before a  
7 judge without a jury, in which event the burden of proof would  
8 still be on the government and you would still have the same  
9 constitutional rights?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Sir, do you understand that upon your plea  
12 of guilty to this charge the Court has the power to impose upon  
13 you a maximum sentence of 20 years' imprisonment, a maximum  
14 period of supervised release of three years, a maximum fine of  
15 the greatest of \$250,000, twice the gross pecuniary gain  
16 derived from the offense or twice the gross pecuniary loss  
17 resulting from the offense, together with a \$100 special  
18 assessment?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Sir, do you also understand that in  
21 addition to those other punishments that I just mentioned, upon  
22 your plea of guilty to this charge, the Court must order you to  
23 make restitution?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Sir, do you understand that if the terms

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1 and conditions of supervised release are violated, you may be  
2 required to serve an additional period of imprisonment which is  
3 equal to the period of supervised release with no credit for  
4 time off for time you have already spent on supervised release?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Have you discussed the sentencing  
7 guidelines with your attorney?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you understand that the Court will not  
10 be able to determine exactly what guideline applies to your  
11 case until after a presentence report has been complete and you  
12 and your attorney and the government have a chance to review it  
13 and to challenge the facts that are set out there by the  
14 probation officer?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Sir, do you understand that in determining  
17 a sentence, it is the Court's obligation to calculate the  
18 applicable sentencing guidelines range and then to consider  
19 that range, possible departures from that range under the  
20 guidelines, and other sentencing factors set out in the statute  
21 18 United States Code, Section 3553(a)?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you understand that under some  
24 circumstances, as set forth in your plea agreement, you or the  
25 government might have the right to appeal whatever sentence is

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1 imposed?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand that parole has been  
4 abolished so if you are sentenced to prison, you will not be  
5 released on parole?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you understand that you will not be  
8 able to withdraw your plea on the ground that your lawyer's  
9 prediction or anybody else's prediction as to the applicable  
10 guidelines range, or as to the actual sentence, turns out not  
11 to be correct?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that the offense to  
14 which you are pleading guilty is a felony?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Are you fully satisfied with the advice,  
17 counsel, and representation given to you by your attorney  
18 Mr. Cecutti?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Am I correct that you are offering to  
21 plead guilty because you are in fact guilty?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Mr. Thompson, if you wish to plead guilty  
24 I am going to ask you to tell me what you did and, as you can  
25 see, your answers will be made in Mr. Cecutti's presence and

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1 your answers will be recorded on the record. I remind you  
2 again, sir, you are still under oath so if you answer falsely,  
3 your answers may later be used against you.

4 Do you understand, sir?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you still wish to plead guilty?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Tell me what you did, Mr. Thompson.

9 THE DEFENDANT: On September 23rd, 2013, while inside  
10 the Litan Jewelry Store, I agreed with others to participate in  
11 a robbery. At this time this robbery was clearly foolish and  
12 wrong and I made a terrible decision in my life. I was  
13 experiencing significant financial pressure and I was  
14 unemployed and abusing marijuana and other drugs. My life was  
15 going in the wrong direction and I became desperate, and I  
16 sincerely regret my decision I made on September 23rd, 2013.

17 I take full responsibility and recognize that because  
18 of my actions, I contributed to innocent people being hurt. I  
19 am truly sorry to them and their families. I accept the  
20 consequence of my actions which I know include my sentence and  
21 the shame and embarrassment that I feel. I let down my family  
22 and disappointed, in particular my children, my partner, my  
23 mother, and my grandfather.

24 Upon my release I am committed to being a responsible  
25 person and I will positively contribute to my family,

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1 community, and society and am going to provide and sacrifice  
2 for my children and raise them the right way so that they will  
3 not follow in my mistakes.

4 THE COURT: Yes, sir.

5 Sir, you knew that that activity that you undertook  
6 that day in Brooklyn was unlawful, didn't you, sir?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Is there anything further by way of  
9 allocution, please?

10 MR. COOPER: Yes, your Honor.

11 In terms of the charges, the robbery conspiracy  
12 charges, Hobbs Act robbery is the object of the offense so a  
13 few of the elements that we would request, your Honor, I will  
14 follow up on.

15 First, that the defendant obtained or took or  
16 attempted to obtain or take property of another. I can  
17 represent to the Court and what we ask the Court to follow up  
18 with the defendant on is that this was an armed robbery where  
19 three individuals went into the Litan Jewelry Store in  
20 Brooklyn, New York. During the course of the robbery, certain  
21 of the robbers smashed display cases and took merchandise  
22 including rings from the store. One of the robbers -- two of  
23 the robbers produced and brandished firearms. One of the  
24 robbers fired a shot at one of the victims, the store owner's  
25 son. Another robber, during the course of the robbery, fired a

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1 shot at the store owner and struck him in the leg.

2 So, in terms of the first element of Hobbs Act  
3 robbery, we would ask the Court to confirm with the defendant  
4 that the object was to obtain or take property of another.

5 The second element here is that the property was  
6 obtained through force of violence or fear of injury.

7 The third element is that the actions, potentially or  
8 actually, obstructed interstate or foreign commerce. I can  
9 represent to the Court that, at trial, the government would  
10 have evidence sufficient to prove beyond a reasonable doubt  
11 that the jewelry had moved in interstate commerce prior to  
12 attempting to being stolen by the defendant and his  
13 co-conspirators.

14 THE COURT: Thank you, Mr. Cooper.

15 MR. COOPER: Thank you.

16 THE COURT: Mr. Thompson, when you and the people you  
17 were working with went into that jewelry store in Brooklyn, it  
18 was your intention to take property by show of force; is that  
19 right?

20 MR. CECUTTI: A moment, your Honor?

21 THE COURT: Yes, sir.

22 (Defendant and counsel conferring)

23 THE DEFENDANT: Your Honor, will you repeat the  
24 question, please? I apologize.

25 THE COURT: Yes, sir.

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1           When you and the other individuals you were working  
2 with went into the Litan Jewelry Store in Brooklyn that day, it  
3 was your plan and your intention to take property of the  
4 jewelry store owners by using show of force; is that right,  
5 sir?

6           THE DEFENDANT: Once inside the jewelry store, your  
7 Honor, yes, that was the plan.

8           THE COURT: And two of the individuals with you took  
9 out their firearms; is that right, sir?

10           (Defendant and counsel conferring)

11           THE DEFENDANT: That's my understanding, your Honor.

12           THE COURT: Is it your understanding as well, sir,  
13 that one or more individuals in the store were shot in that  
14 escapade?

15           THE DEFENDANT: Yes, your Honor.

16           THE COURT: Is it the fact, sir, and is it your  
17 understanding, that some of the folks you were working with  
18 smashed the jewelry cases and took jewelry out?

19           THE DEFENDANT: Yes, your Honor.

20           THE COURT: And Mr. Cecutti, we don't have any issue  
21 about interstate commerce here, do we?

22           MR. CECUTTI: No, your Honor.

23           THE COURT: Mr. Cooper?

24           MR. COOPER: I would also proffer, with respect to  
25 venue, your Honor, that this is a conspiracy charge and that

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1 acts in furtherance of the conspiracy occurred in the Southern  
2 District of New York.

3 THE COURT: Mr. Thompson, is it the fact that when  
4 planning the robbery or after the robbery, certain actions took  
5 place in here in New York, that is, the Southern District of  
6 New York -- that's Manhattan or the Bronx -- in connection with  
7 that robbery? Is that right?

8 THE DEFENDANT: Yes.

9 THE COURT: I think I asked you this before but I will  
10 ask you again: You knew that that activity was unlawful,  
11 right, sir.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Thank you.

14 Mr. Cecutti, do you know of any valid legal defense  
15 that would prevail if you went to trial?

16 MR. CECUTTI: No, your Honor.

17 THE COURT: Do you know of any reason why Mr. Thompson  
18 should not plead guilty?

19 MR. CECUTTI: No, your Honor.

20 THE COURT: Very well, then. The plea is accepted.

21 It is the finding of the Court in the case of the  
22 United States against Kendall Thompson that the defendant is  
23 fully competent and capable of entering an informed plea, and  
24 that his plea of guilty is knowing and voluntary and is  
25 supported by an independent basis in fact containing each and

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1 every essential element of the offense.

2 My findings are based upon Mr. Thompson's allocution  
3 and, in addition, on my observations of Mr. Thompson here in  
4 Court today.

5 The plea of not guilty is withdrawn, the plea of  
6 guilty is accepted and shall be entered. The defendant is now  
7 adjudged to be guilty of the offense.

8 Now, Mr. Thompson, as you know, you will be required  
9 to meet with the probation officer and to give the officer  
10 certain information to be included in the presentence report.  
11 Mr. Cecutti may be present with you when you visit with the  
12 officer if you want, but certainly both you and he and the  
13 government will have a chance to read the presentence report  
14 prior to sentencing.

15 Sentencing will be on --

16 THE DEPUTY CLERK: September 2nd at 10:00 a.m.

17 THE COURT: Is there anything further today, counsel?

18 MR. COOPER: Your Honor, there is also a forfeiture  
19 allegation in the indictment and pursuant to the plea  
20 agreement, the defendant is admitting to the forfeiture  
21 allegation. We would just ask the Court to confirm with the  
22 defendant that he is admitting to the forfeiture allegation in  
23 the indictment.

24 (Defendant and counsel conferring)

25 THE COURT: Mr. Thompson?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: In the indictment there is an allegation  
3 where you agree that in committing the offense, the robbery  
4 that we have been talking about, you have agreed to forfeit all  
5 proceeds of that robbery in your possession.

6 Do you recall that, sir?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And you agree to that too, right?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Thank you, sir.

11 Mr. Cooper, is there anything further?

12 MR. COOPER: No. Thank you, your Honor.

13 THE COURT: Mr. Cecutti, anything else?

14 MR. CECUTTI: No, your Honor. Thank you.

15 THE COURT: Thank you, counsel. Good morning.

16 Thank you, Mr. Marshal.

17 THE DEFENDANT: Thank you.

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